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7 Attorneys for  
Pacific Surf Designs, Inc.

8  
9  
10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
12

13 FLOWRIDER SURF, LTD., a  
14 Canadian corporation; and SURF  
15 WAVES, LTD., a company  
incorporated in the United Kingdom,

16 Plaintiffs,

17 vs.

18 PACIFIC SURF DESIGNS, INC, a  
19 Delaware corporation,

20 Defendant.

CASE NO. 3:15-cv-01879-BEN-BLM

**DEFENDANTS SUPPLEMENTAL  
SUBMISSION OF SUPPORT FOR  
ACCOUNTING OF ATTORNEYS'  
FEES AND COSTS REQUESTED  
BY THIS COURT'S ORDER [DKT.  
308]**

The Hon. Roger T. Benitez  
Courtroom 5A

1 After prevailing, and upon a proper motion brought by PSD [Dkt. 282], the  
2 Court found this case exceptional under the fee shifting provision of 35 U.S.C. §  
3 285 [Dkt. 308]. In compliance with that Order, PSD filed its Support for Fees on  
4 March 30, 2020 [Dkt. 309], which Plaintiffs opposed on April 15, 2020 [Dkt. 310].  
5 As ordered by the Court, PSD filed its Response to Plaintiff's Opposition on April  
6 22, 2020 [Dkt. 311]. PSD now files this Supplemental Support for Fees to add fees  
7 incurred on this matter after March 30, 2020, which primarily relate to the  
8 preparation and filing of PSD's Response [Dkt. 311] and to the preparation of this  
9 supplemental support. All the supplemental fees presented herein were billed in  
10 April and May 2020, which is after the filing date of PSD's March 30, 2020  
11 Response [Dkt. 311]. No further supplementation is expected prior to the Court  
12 entering an order regarding the fee award.

13 **I. PSD REQUESTS ALL ATTORNEYS' FEES AND COSTS AS THE**  
14 **PREVAILING PARTY UNDER THE FEE SHIFTING PROVISION OF**  
15 **35 U.S.C. § 285.**

16 In its Support for Fees [Dkt. 309], PSD requested the Court award all fees and  
17 costs for defending this litigation against defendants Flowrider Surf, LTD. and Surf  
18 Waves LTD. The Motion included supporting exhibits A to F.

19 Attached hereto as Exhibit G is the Supplemental Declaration of Joseph  
20 Thomas, which sets forth a complete accounting of all supplemental fees incurred  
21 by PSD from Thomas Whitelaw after filing the Support for Fees on March 30, 2020.  
22 Exhibit G supports a further award of \$59,100, which is added to the summary table  
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below.

Attached hereto as Exhibit H is the Supplemental Declaration of Charanjit Brahma, which sets forth a complete accounting of all supplemental fees incurred by PSD from Troutman Sanders' after filing the Support for Fees on March 30, 2020. Exhibit H supports a further award of \$8,572, which is added to the summary table below.

Below is a summary of all fees and costs that are appropriately awarded for a finding that this case is exceptional under §285. The amount as supported from Section I of the Support for Fees [Dkt. 309] is shown, as well as the amount of the supplement supported herein.

ACTIVITY	AMOUNT
Troutman Sanders fees and costs to defend this case (Ex. A)	\$2,466,709
Expert costs (Brahma Dec, §A ¶ 4-10)	\$ 14,875
Troutman Sanders fees and costs to respond to the Court Order (Ex. C)	\$ 18,495
Thomas Whitelaw fees and costs (Ex. E)	\$ 224,355
Kaufman Dolowich Fees for prior Surf Waves matter (Ex. F1)	\$ 30,471
Kaufman Dolowich Fees for prior Flowrider matter (Ex F2)	\$ 4,281
<b>TOTAL FROM DKT. 309 (Section I)</b>	<b>\$ 2,759,186</b>
Thomas Whitelaw supplemental fees (Ex. G)	\$ 59,100

1	Troutman Sanders supplemental (Ex. H)	\$ 8,572
2	<b>TOTAL SUPPLEMENTAL FEES</b>	<b>\$ 67,672</b>
3		
4	<b>TOTAL JUSTIFIED FEES &amp; COSTS AWARD</b>	<b>\$ 2,826,858</b>

5  
6 Accordingly, if the Court finds that PSD should be fully compensated for its  
7 finding this case exceptional under §285, the Court should award PSD \$2,826,858.  
8

9 **II. ALTERNATIVELY, PSD REQUESTS THE COURT ALLOCATE**  
10 **COSTS IN THE REASONABLE MANNER IN WHICH PSD**  
11 **OUTLINED IN ITS SUPPORTING DECLARATION.**

12 In the event that the Court finds that PSD is not entitled to all attorneys' fees  
13 and costs, and instead allocates the award between the '016 patent and the '589  
14 patent, PSD submitted in its Support for Fees [Dkt. 309] an alternative allocation of  
15 attorney's fees.

16 Attached hereto as Exhibit G is the Supplemental Declaration of Joseph  
17 Thomas, which sets forth a complete accounting of all supplemental fees incurred  
18 by PSD from Thomas Whitelaw after filing the Support for Fees on March 30, 2020.  
19 Exhibit G supports a further award of \$59,100, which is added to the summary table  
20 below.  
21

22 Attached hereto as Exhibit H is the Supplemental Declaration of Charanjit  
23 Brahma, which sets forth a complete accounting of all supplemental fees incurred by  
24 PSD from Troutman Sanders' after filing the Support for Fees on March 30, 2020.  
25 Exhibit H supports a further award of \$8,572, which is added to the summary table  
26  
27  
28

below.

Below is a summary of all fees and costs that are appropriately awarded for a finding that this case is exceptional under §285 where the Court finds it necessary to reduce the award to reflect activity and tasks directed to the '589 patent. The amount as supported from Section II of the Fee Motion [Dkt. 309] is shown, as well as the amount of the supplement supported herein.

<b>ACTIVITY</b>	<b>AMOUNT</b>
Fees and costs directed only to '016 activities (Ex. B1), allocated at 100%	\$ 525,762
Mixed fees and costs directed to '016 and '589 activities (Ex. B2), before June 2017 and allocated at 67%	\$1,091,081
Mixed fees directed to '016 and '589 activities (Ex. B3), after June 2017 and allocated at 67%	\$ 168,106
Troutman Sanders fees and costs to respond to the Court Order (Ex. C)	\$ 18,495
Expert costs (Brahma Dec, §B), allocated	\$ 12,969
Thomas Whitelaw fees and costs (Ex. E)	\$ 224,355
Kaufman Dolowich Fees for prior Surf Waves matter (Ex. F1)	\$ 30,471
<b>TOTAL FROM DKT. 309 (Section II)</b>	<b>\$ 2,040,768</b>
Thomas Whitelaw supplemental fees and costs (Ex. G)	\$ 59,100

Troutman Sanders supplemental fees and costs (Ex. H)	\$ 8,572
<b>TOTAL SUPPLEMENT</b>	<b>\$ 67,672</b>
<b>TOTAL JUSTIFIED FEES AWARD</b>	<b>\$ 2,108,440</b>

Accordingly, if the Court finds that PSD should be only partially compensated for its finding this case exceptional under §285, the Court should award PSD \$ 2,108,440.

### III. CONCLUSION

The Court has found this case exceptional. To compensate PSD properly for litigating this case and deter future unwarranted litigation, an award of all attorneys' fees and costs is proper and just as set forth in Section I above. Alternatively, PSD should be awarded fees and costs as allocated in Section II above.

Dated: May 15, 2020

Respectfully submitted,

THOMAS WHITELAW & KOLEGRAFF LLP

By: /s/ Joseph E. Thomas  
JOSEPH E. THOMAS  
Attorneys for Pacific Surf Designs, Inc.

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on May 14, 2020, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any counsel of record who have not consented to electronic service through the Court's CM/ECF system will be served by electronic mail, first class mail, facsimile and/or overnight delivery.

Dated May 15, 2020

By: /s/ Tierra Mendiola  
Thomas Whitelaw & Kolegraff

EXHIBIT G



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14 Plaintiffs,

15 vs.

16 PACIFIC SURF DESIGNS, INC, a  
17 Delaware corporation,

18 Defendant.

CASE NO. 3:15-cv-01879-BEN-BLM

**SUPPLEMENTAL DECLARATION  
OF JOSEPH E. THOMAS IN  
SUPPORT OF ACCOUNTING OF  
COSTS AND ATTORNEY'S FEES  
AWARDED**

The Hon. Roger T. Benitez  
Courtroom 5A

1                   **SUPPLEMENTAL DECLARATION OF JOSEPH E. THOMAS**

2           I, Joseph E. Thomas, declare:

3           1.       I am an attorney duly admitted to practice law in the State of California  
4 and am the managing partner with Thomas Whitelaw & Kolegraff, LLP. I have  
5 been an attorney of record and managed this matter since October 30, 2019. If  
6 called as a witness, I could and would testify competently as to the facts set forth  
7 below, as I know each to be true based upon my own personal knowledge or upon  
8 my review of the files and records maintained by Thomas Whitelaw &  
9 Kolegraff LLP in the regular course of its representation of the Defendants. I  
10 submit this supplemental declaration in support of the accounting for fees and costs  
11 incurred by Pacific Surf Designs, Inc. (“PSD”) and Flow Services, Inc. (“FS”) after  
12 March 30, 2020 regarding this matter.  
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14           2.       On February 25, 2020 the Court issued an Order [Dkt. 308] finding this  
15 case exceptional under 35 U.S.C §285, and awarded reasonable attorney’s fees and  
16 costs to PSD . In compliance with the Court Order, PSD filed its Support for Fees  
17 on March 30, 2020 [Dkt. 309]. On April 15, 2020, Plaintiffs filed their Opposition  
18 [Dkt. 310]. On April 22, 2020 PSD filed its Response [Dkt. 311] to the Plaintiffs’  
19 Opposition.  
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21           3.       Thomas Whitelaw & Kolegraff, now responsible for representing PSD  
22 in all matters, expended significant time and effort in preparing the Response [Dkt.  
23 311]. This Response required the evaluation and analysis of Plaintiffs proposed  
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adjustments to PSD financial exhibits, and the preparation of a 20 page Response.

4. Thomas Whitelaw & Kolegraff also incurred fees in preparing PSD's supplemental support, including this supplemental declaration of J. Thomas and the supplemental declaration of C. Brahma.

5. Below is a true and accurate table identifying the hours incurred responding in preparing the Response [Dkt. 311] and in preparing the supplemental support:

DATE	BILLER	DESCRIPTION	HRS.	AMT.
4/7/2020	T. Mendiola	Prepare exceptional case motion into pleading format; Review and revise same.	2.50	\$375.00
4/15/2020	T. Mendiola	Download objections filed by plaintiffs; Route same to team; Review same; Begin preparing reply; Research local rules.	6.50	\$975.00
	G. Thomas	Review plaintiffs brief/objections; Review plaintiff's spreadsheets; Discussion with W. Kolegraff regarding reply; Meeting with J. Thomas and W. Kolegraff regarding reply; Draft reply outline and research reply.	13.50	\$4,050.00
	J. Thomas	Review and analyze Whitewater's objections to award of fees and costs; Conduct legal and factual analysis of spreadsheets and legal arguments.	6.50	\$3,900.00
	W. Kolegraff	Receive and review Whitewater's objections to fee justification; Team meeting regarding same; Review cases regarding joint and several liability; Review and analyze spreadsheets modified by Whitewater; Outline our approach to response to objections.	6.50	\$3,250.00
4/16/2020	T. Mendiola	Review correspondence regarding reply brief; Attention to case documents.	4.00	\$600.00
	G. Thomas	Draft reply to plaintiff's objections.	8.00	\$2,400.00

	W. Kolegraff	Review cases cited by Whitewater; Begin drafting response to objections.	6.00	\$3,000.00
4/17/2020	T. Mendiola	Review correspondence regarding reply brief.	0.50	\$75.00
	G. Thomas	Draft reply to plaintiff's objections; Review and edit reply to objections.	10.50	\$3,150.00
	J. Thomas	Conduct legal research, analysis of spreadsheets and continue drafting reply brief.	6.50	\$3,900.00
	W. Kolegraff	Further review of case law; Analyze Whitewater spreadsheets; Continue drafting response to objections.	6.25	\$3,125.00
4/18/2020	G. Thomas	Review and edit responses to objections.	2.00	\$600.00
	W. Kolegraff	Continue drafting response to objections.	4.50	\$2,250.00
4/20/2020	T. Mendiola	Review correspondence regarding reply brief.	1.00	\$150.00
	G. Thomas	Review and edit responses to objections; Meeting with J. Thomas and W. Kolegraff regarding same; Review and edit responses to objections.	9.00	\$2,700.00
	J. Thomas	Conference call with client regarding objections and opposition brief; Conference call with C. Brahma regarding objections and arguments regarding legal fees and costs; Continue drafting reply brief.	4.50	\$2,700.00
	W. Kolegraff	Continue drafting response to objections; Finish first full draft; Route to team for comments; Communications with C. Brahma regarding Whitewater spreadsheets and allocations.	7.50	\$3,750.00
4/21/2020	T. Mendiola	Review reply brief; Revise and edit same; Review correspondence regarding same; Attention to case documents.	6.50	\$975.00
	G. Thomas	Review and edit responses to objections.	1.25	\$375.00
	W. Kolegraff	Continue drafting response to objections; Incorporate comments from PSD and C. Brahma.	5.50	\$2,750.00
4/22/2020	T. Mendiola	Review and revise reply brief; Prepare same for filing.	4.00	\$600.00
	J. Thomas	Finalize reply brief for filing and spreadsheet analysis; Conference calls with client and C. Brahma regarding same.	7.50	\$4,500.00

	G. Thomas	Final review of responses to objections brief; Review table of contents.	2.25	\$675.00
	W. Kolegraff	Finalize response to objections; Attention to filing response.	8.50	\$4,250.00
5/13/2020	W. Kolegraff	Prepare the supplemental submission regarding support for fees; Review and amend the Supplemental Declaration of J. Thomas; Review and amend the Supplemental Declaration of C. Brahma; Prepare supporting spreadsheets for fees.	5.50	\$2,750.00
	G. Thomas	Review and amend the submission regarding fees and two supporting declarations.	2.25	\$675.00
	J. Thomas	Prepare the supplemental declarations of J. Thomas and C. Brahma.	1.00	\$600.00
		<b>TOTAL</b>		<b>\$59,100.00</b>

6. Below is a summary of the hours identified in the table above.

- a. Joseph E. Thomas – 38.0 hours;
- b. William J. Kolegraff – 50.25 hours;
- c. Grant J. Thomas – 48.75 hours; and
- d. Tierra Mendiola – 25.0 hours.

7. I have reviewed the time identified above, and based upon my 39 years of experience as a complex business and patent litigator, find that all fees billed for preparing the Response [Dkt. 311] and for preparing the supplemental support, including the declarations of Charanjit Bramha and Joseph E. Thomas, are reasonable and necessary. Pursuant to the court's order, these supplemental fees which total \$59,100 should be awarded to PSD.

1 I declare under penalty of perjury under the laws of the State of California  
2 that the foregoing is true and correct.  
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4 Executed May 15, 2020, at Irvine, California.  
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7 /s/ Joseph E. Thomas  
Joseph E. Thomas  
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Dated May 15, 2020

By: /s/ Tierra Mendiola  
Tierra Mendiola  
Thomas Whitelaw & Kolegraff

## EXHIBIT H



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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**  
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12 FLOWRIDER SURF, LTD., a Canadian  
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CASE NO. 3:15-cv-01879-BEN-BLM  
**SUPPLEMENTAL DECLARATION  
OF CHARANJIT BRAHMA IN  
SUPPORT OF ACCOUNTING OF  
COSTS AND ATTORNEY'S FEES  
AWARDED**

The Hon. Roger T. Benitez  
Courtroom 5A

**DECLARATION OF CHARANJIT BRAHMA**

I, Charanjit Brahma, declare:

1. I am an attorney duly admitted to practice law in the State of California and I am a partner at Troutman Sanders LLP located in their San Francisco office, and I have been so at all times since Troutman Sanders LLP began representing Defendants Pacific Surf Designs, Inc. ("PSD") and Flow Services Inc. ("FS") in this matter (*Flowrider Surf, Ltd. et al v. Pacific Surf Designs, Inc. Case No. 3:15-cv-01879 BEN BLM*). Troutman Sanders' representation began at the filing of the case in September 2015 and extended until the patent litigation was transferred to the Thomas Whitelaw firm in October 2019.

2. During the period between March 30, 2020 and May 13, 2020, PSD incurred supplemental fees from Troutman Sanders for its support of Thomas Whitelaw in filing the Response to Plaintiffs' Objections [Dkt. 311] and in preparing this Supplemental Declaration. I was the only time biller for Troutman Sanders during this time period, and I billed 12.7 hours at the same reduced hourly rate of \$675/hr charged for my time prior to transfer of the case for a total of \$8,572. I personally reviewed the bill that was issued to PSD and FS and found it to be fair and reasonable. If called as a witness, I could and would testify competently as to the facts set forth below, as I know each to be true based upon my own personal knowledge.

3. Below is a chart which indicates the date, description, hours, and amount for fees incurred in April and May 2020 regarding my support to Thomas Whitelaw in preparing the Response to Plaintiff's Opposition to fees and in preparing this Supplemental Declaration.

DATE	BILLER	DESCRIPTION	Hrs.	Amt.
04/15/2020	C. Brahma	Review Plaintiff's opposition brief to fees accounting and related declaration and spreadsheets and prepare comments for PSD's counsel.	1.6	\$1,080.00
04/16/2020	C. Brahma	Review Plaintiff's opposition brief to fees accounting and related declaration and spreadsheets and prepare comments for PSD's counsel.	3.8	\$2,565.00
04/20/2020	C. Brahma	Review and revise draft reply brief re accounting for attorneys' fee award.	3.2	\$2,160.00
04/21/2020	C. Brahma	Review and revise draft reply brief re accounting for attorneys' fee award.	3.8	\$2,565.00
05/13/2020	C. Brahma	Review and revise the supplemental declaration of C. Braham.	0.3	\$ 202.50
<b>TOTAL FEES BILLED</b>			<b>12.7</b>	<b>\$8,572.00</b>

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed May 15, 2020, at San Francisco, California.

/s/ Charanjit Brahma  
Charanjit Brahma

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Dated May 15, 2020

By: /s/ Tierra Mendiola

Tierra Mendiola

Thomas Whitelaw & Kolegraff